



January 11, 2001

Mr. Darrin M. Coker  
City Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, Texas 77581

OR2001-0115

Dear Mr. Coker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143133.

The City of Pearland (the "city") received a request for a complete copy of all documents concerning the requestor's complaint, including witness statements. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The submitted information appears to fall under section 552.022(a)(1) of the Government Code. Section 552.103 is a discretionary exception under the Public Information Act and is, therefore, not "other law" that makes the submitted information confidential. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). Accordingly, you must release the submitted information except as noted below.

We note that the submitted information contains an offense report pertaining to a juvenile suspect which is excepted under section 552.101 in conjunction with section 58.007 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The submitted information contains an offense report that pertains to juvenile conduct that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply. Therefore, you must withhold the marked offense report under section 552.101 in conjunction with section 58.007(c) of the Family Code.

We also note that the "daily activity logs" appear to contain the names of juvenile suspects which are excepted under section 552.101 of the Government Code in conjunction with common law privacy. Section 552.101 encompasses information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* Thus, you must withhold the identity of juvenile suspects in the "daily activity logs" under section 552.101 in conjunction with common law privacy.

The submitted information also contains information which is excepted under section 552.117(2) of the Government Code. Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer complied with section 552.024 of the Government Code. We have marked examples of the type of information that you must withhold under section 552.117(2) of the Government Code.<sup>1</sup>

In conclusion, you must withhold juvenile suspect information under section 552.101 in conjunction with common law privacy and section 58.007 of the Family Code. You must also withhold information under section 552.117(2) of the Government Code. However, you must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

---

<sup>1</sup>Please note that the requestor has a special right of access to her section 552.117(2) information under section 552.023 of the Government Code. Section 552.023 grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, you may not withhold the requestor's section 552.117(2) information.

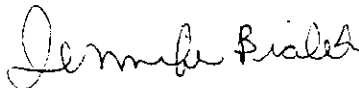
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/er

Ref: ID# 143133

Encl: Marked documents

cc: Ms. Alana Fleming-Groneman  
Patrol Officer, Shift 1  
Pearland Police Department  
c/o Mr. Darrin M. Coker  
3519 Liberty Drive  
Pearland, Texas 77581  
(w/o enclosures)